IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6659 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRILOKESH @ JANAK RASIKLAL KADIA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6659 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR RM CHAUHAN, LD.AGP for Respondent No. 1,3

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of filing this Special Civil Application,

the petitioner has challenged the order passed by the Police Commissioner, Ahmedabad City, on 1st May, 2003, directing the detention of the petitioner in exercise of powers conferred upon him by sec.3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short). The petitioner was declared as "bootlegger" within the meaning of PASA Act. In pursuance of the above said order, the petitioner came to be detained on 1st May, 2003.

2. The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration two aspects of the matter. Firstly, registration of crime against the petitioner on 29th April, 2003, under Sec.66(1)(b), 65(a), 81, 116-B of the Bombay Prohibition Act whereby foreign liquor of the value of Rs.70,440/- came to be seized from the possession of the petitioner. Secondly, the detaining authority placed reliance on two statements of the witnesses recorded by proposing authority on 29th April, 2003, and verified by the detaining authority on 30th April, 2003, whereby the witnesses have revealed the incidence took place on 5th April, 2003 and 20th March, 2003. In one of the incident it is alleged that on suspicion that the witness was informing the police about the illegal activities of the petitioner the witness was beaten while in the second incident the witness was forced to kept illegal liquor in his house and on refusing the witness was beaten by the petitioner. From the above fact, the order impugned came to be passed.

3. Learned advocate Ms.D.R.Kachhavah for the petitioner and learned AGP Mr.Chauhan for the respondents were heard at length. The affidavit-in-reply of the detaining authority has placed on record by the learned AGP was also taken into consideration.

4. Out of rival contentions raised on behalf of the petitioner and controverted by the learned AGP, the matter can be disposed of on the ground that whether the order is vitiated on non-application of mind by the detaining authority on the vital aspect of the matter. On perusing the grounds placed on record, it is clear that the petitioner was on police remand an order came to be passed. In this respect, the detaining authority came to the conclusion that on remand period being over, the petitioner was likely to be produced before the competent court and the petitioner was likely to move bail application. The detaining authority also came to the conclusion that on so moving the bail application by the petitioner, he was likely to be released on bail and he

was likely to continue his illegal activities. In this respect in para 10 of the affidavit-in-reply of the detaining authority, it is mentioned that from the materials placed before him and in the facts and circumstances of the case as well as legal provisions applicable to the facts of the case, he mentioned in the ground that what necessitated him to pass the order of detention. Now the question is whether there was any material before the detaining authority while passing the impugned order that petitioner was likely to be released on bail. On going through the grounds placed on record and affidavit, it is apparent that there was no material before the detaining authority to come to such conclusion and, therefore, this is a case wherein the order is vitiated on account of non-application of mind by the detaining authority towards the vital aspect of the matter. The facts of the case, therefore, is squarely covered by a decision of the Apex Court in the case of Amritlal Vs. Union of India as reported in AIR 2000 SC 3675. Thus, the order impugned is required to be quashed and set aside on this ground alone.

5. In the result, this special civil application is allowed. The order passed by the Police Commissioner, City of Ahmedabad, on 1st May, 2003, directing the detention of petitioner in exercise of powers conferred upon him under sec.3(1) of the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute with no order as to costs.

(J.R. Vora, J.)

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